

## NOTICES OF RULEMAKING DOCKET OPENING

The Administrative Procedure Act (APA) requires the publication of Notices of Rulemaking Docket Opening whenever an agency opens a rulemaking docket to consider rulemaking. Under the APA effective January 1, 1995, agencies must submit a Notice of Rulemaking Docket Opening before beginning the formal rulemaking process.

### NOTICE OF RULEMAKING DOCKET OPENING

**DEPARTMENT OF AGRICULTURE  
PLANT SERVICES DIVISION**

1. **Title and its heading:** 3, Agriculture  
**Chapter and its heading:** 4, Department of Agriculture - Plant Services Division  
**Article and its heading:** 1, General Rules and Definitions  
Article 2, Quarantine  
**Section numbers:** R3-4-501, R3-4-229, R3-4-231
2. **The subject matter of the proposed rule:**  
This rulemaking updates Title 3 of the *Arizona Administrative Code* and establishes additional requirements for the nut tree pests quarantine rules.
3. **A citation to all published notices relating to the proceeding:**  
Not applicable.
4. **The name and address of agency personnel with whom persons may communicate regarding the rule:**  
Name: Shirley Conard, Rules Specialist  
Address: Arizona Department of Agriculture  
1688 West Adams, Room 235  
Phoenix, Arizona 85007  
Telephone: (602) 542-0962  
Fax: (602) 542-5420
5. **The time during which the agency will accept written comments and the time and place where oral comments may be made:**  
Written comments will be accepted at the location listed in question #4 between 8 a.m. and 5 p.m., Monday through Friday. Oral comments will be accepted at the location listed in question #4 between 8 a.m. and 4:30 p.m., Monday through Friday.
6. **A timetable for agency decisions or other action on the proceeding, if known:**  
None known.

### NOTICE OF RULEMAKING DOCKET OPENING

**ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY  
UNDERGROUND STORAGE TANKS**

1. **Title and its heading:** 18. Environmental Quality  
**Chapter and its heading:** 12. Department of Environmental Quality - Underground Storage Tanks  
**Article and its heading:** Article 1, Definitions  
Article 2, Technical Requirements  
Article 6, Underground Storage Tank Assurance Fund  
**Section numbers:** R18-12-101, Definitions; R18-12-250 through R18-12-259, LUST Release Reporting; R18-12-260 through R18-12-269, LUST Corrective Actions New Sections; R18-12-280, LUST Sampling Requirements; R18-12-604 through R18-12-610, UST Assurance Fund Program; R18-12-604 through R18-12-609, UST Assurance Fund Program

*(The Department will file a notice of proposed rule making relating to R18-12-250 through R18-12-269 and a separate notice of proposed rule making relating to R18-12-604 through R18-12-610. The Department may revise the definitions in R18-12-101 during either or both rulemakings. The Department may add, delete, or modify Section numbers during the rulemakings to address the subject matter in question 2 below.)*

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**2. The subject matter of the proposed rules:**

The Department is considering a rule making that would affect A.A.C. Title 18, Chapter 12, Article 2 relating to underground storage tank ("UST") technical requirements. The rule making being considered would (1) establish UST release reporting and corrective action rules at R18-12-250 through R18-12-269, to implement the requirements of A.R.S. §§ 49-1004 and 49-1005; and (2) amend the sampling rules at R18-12-280 to correct a citation error.

The Department is also considering a rule making that would affect A.A.C. Title 18, Chapter 12, Article 6 relating to the UST state assurance account or state assurance fund ("SAF") program. The rule making being considered would repeal the current SAF rules at R18-12-604 through R18-12-610 and replace them with revised SAF rules. The purpose of the rule making being considered is to make the rules more clear, concise, and understandable and effect several substantive changes necessitated by recent legislation, opinions of the Attorney General, and practice of the Department. The substantive changes being considered include the following:

- (1) Make new definitions for "restricted funds," "site," and "unrestricted funds."
- (2) Remove priority point scoring rules that distinguish between preapproval and direct payment applications and reimbursement applications.
- (3) Clarify that the technical reasonableness rules applicable to preapproval and direct payment applications are also applicable to reimbursement applications.
- (4) Clarify that the information an application must include, concerning eligibility to receive SAF payment, must include information concerning payment delinquencies, enforcement proceedings, and convictions of SAF fraud, if known to the applicant; the status of compliance with or exemption from the financial responsibility requirements; identification of required claims against "applicable" financial assurance; and the status of compliance with permanent or temporary closure or upgrade requirements.
- (5) Require work plans, reports, and cost estimates to be prepared under the supervision of and signed and sealed by a person who satisfied the qualification requirements of R18-12-601 through R18-12-603 and is registered through the Board of Technical Registration.
- (6) Require applications and the Department's SAF cost schedule to include task-based costs, where practicable.
- (7) Make the financial need information that must be included in an application and the process for assigning financial need priority points consistent with the financial need information and scoring process required under the UST Grant program, with minor variations to account for differences between the two programs.
- (8) Make the opportunity to amend an application consistent with licensing time frame requirements by removing the requirement that an application deficiency not identified by the Department is "deemed acceptable" and by distinguishing between the "lapse" of an application and the "abandonment" of an application.
- (9) Clarify the process for assigning risk priority points.
- (10) Provide for review and crediting of LUST upgrade costs during the processing of a direct payment or reimbursement application.
- (11) Distinguish between non-preapproved costs of preapproved work and non-preapproved costs of non-preapproved work, and allow the latter to be included in a direct payment application without requiring a separate reimbursement application.
- (12) Define when a corrective action is necessary, reasonable, cost-effective, and technically feasible within the meaning of A.R.S. § 49-1005, and add the requirement that the application must demonstrate the corrective action alternative is the most inexpensive alternative feasible.
- (13) Clarify that no payment will occur for (a) merely confirming the existence of a release, (b) cleaning up soil to levels below the new SRLs, (c) cleaning up soil to residential levels if there is no residential use at the time the corrective action is complete, (d) cleaning up water to below applicable aquifer water quality standards or alternative standards selected in accordance with A.R.S. § 49-1005, and (e) planning, closing, or removing an UST system.
- (14) Separately identify substantive review requirements from administrative completeness review requirements consistent with licensing time frames law.
- (15) Repeal the reduction in reimbursement rules.
- (16) Relate the law that shall govern review of an application to the timing of the review.
- (17) Clarify the process for determining when an application is deemed received by the Department.
- (18) Revise and clarify the processes for resolving disagreements consistent with A.R.S. §§ 41-1092 through 41-1092.12 and 49-1091.

**3. A citation to all published notices relating to the proceeding:**

Notice of Rulemaking Docket Opening: 3 A.A.R. 3368, November 28, 1997.

**4. The name and address of agency personnel with whom persons may communicate regarding the rules:**

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Name: George Tsiolis or Martha Seaman  
Address: Department of Environmental Quality  
3033 North Central Avenue  
Phoenix, Arizona 85012  
Telephone: (602) 207-2257  
Fax: (602) 207-2251

5. **The time during which the agency will accept written comments and the time and place where oral comments may be made:**  
The Department may issue one or more notices of public meeting to discuss the rule changes under consideration prior to filing a notice of proposed rulemaking. Following publication of a notice of proposed rulemaking, the Department will accept written comments during the public comment period and oral comments at one or more proceedings to be scheduled within the statutorily mandated time-frame. Any notices of public meeting and proposed rule making will be published in the *Arizona Administrative Register*.
6. **A timetable for agency decisions or other action on the proceeding, if known:**  
The Department anticipates convening one or more public meetings in early 1999 to discuss the rulemakings under consideration.